


Property Loss and Cultural Heritage Restoration in the Aftermath of Genocide: Understanding Harm and Conceptualising Repair

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ABSTRACT

This article seeks to contribute a ‘thicker’ understanding of the harm caused by the destruction of cultural heritage and the means through which that harm can be redressed. It analyses attacks on property of local significance to the Cham, an Islamic group subjected to religious persecution and genocide during the Khmer Rouge regime in Cambodia. Using Bernadette Atuahene’s property-loss concepts of ‘dignity takings’ and ‘dignity restoration,’ the article links the loss of property associated with the group’s cultural heritage to experiences of dehumanization, infanticide and community destruction. The article explores how responses to the Cham’s loss of cultural heritage have been iterative, at times unintentional and ultimately unsuccessful in redressing the full impacts of the loss. It stresses the importance of moving beyond a focus on specific restitution to develop a spectrum of interventions which reaffirm victims’ humanity, reinforce their agency and allow them to reconnect meaningfully with their heritage.

KEYWORDS: Cambodia, cultural heritage, dignity takings, genocide, property

INTRODUCTION

Recent years have seen a proliferation in international debate and scholarship on conflict-related destruction of cultural heritage.¹ While attacks on cultural

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¹ F Francioni Fe Lenzerini, ‘The Destruction of the Buddhas of Bamiyan and International Law’ *European Journal of International Law* 619–51; J Hladik, ‘The UNESCO Declaration Concerning the Intentional Destruction of Cultural Heritage,’ *Art, Antiquity & Law* 215–36. E.g., Emma Cunliffe, Nibal Muhasen and Marina Lostal, ‘The Destruction of Cultural Property in the Syrian Conflict,’ *International Journal of Cultural Property* 23(1) (2016): 1–31; Francesci Francioni and Federico Lenzerini, ‘The Destruction of the Buddhas of Bamiyan and International Law,’ *European Journal of International Law* 14(4) (2003) 619–651;

heritage are often framed as ‘crimes against the common heritage of humanity,’ there is increasing recognition of the need to consider the particular impacts these crimes can have on targeted groups.² As observed by the former UN Special Rapporteur in the field of cultural rights, the destruction of cultural heritage can mean the denial of a local population’s ‘identity, their beliefs, their history and their dignity.’³ Reflecting this growing recognition, an emerging literature has begun to explore the nature of this harm and to theorise appropriate responses.⁴

Scholarship has tended to prioritise the loss of internationally valued monuments and the associated challenges of restoring and/or reconstructing such objects.⁵ Less theorised are other forms of heritage frequently subject to attack during periods of conflict and atrocity. These include intangible cultural heritage, such as language, traditions, songs and dance, and the less internationally significant ‘instruments, objects, artefacts and cultural spaces’ which shape and inform a group’s heritage and identity.⁶ This lack of theorisation has implications for reparation: if the full nature of harm is not understood, then responses may feel incomplete, inappropriate or even offensive. This in turn may have implications for postconflict recovery; the ongoing inability to access and enjoy cultural heritage may ‘threaten stability, social cohesion and cultural identity’ and constitute a ‘major obstacle to dialogue, peace and reconciliation.’⁷ These challenges resonate with arguments within the transitional justice literature on the need for ‘thicker’ understandings of conflict and transition,⁸ as well as broader debates about the value of closely examining the diverse forms of harm,⁹ injustice and reconciliation.¹⁰ In this article, we use the phrase ‘a thicker understanding of harm’ to describe an approach which is multi-layered, embraces a range of theoretical and practical perspectives and is embedded in the perspectives of victimised communities.

Jan Hladik, ‘The UNESCO Declaration Concerning the Intentional Destruction of Cultural Heritage,’ *Art, Antiquity & Law* 9 (2004): 215–236.

- 2 UNHRC, ‘Cultural Rights and the Protection of Cultural Heritage, A/HRC/RES/33/20,’ 6 October 2016; UNHRC, ‘Report of the Special Rapporteur in the Field of Cultural Rights,’ A/HRC/31/59, 3 February 2016.
- 3 UNHCHR, “A Very Dark Future for the Local Populations in Northern Mali”, Warn UN Experts,’ 10 July 2012.
- 4 Elisa Novic, *The Concept of Cultural Genocide* (Oxford: OUP, 2016); Dacia Viejo-Rose, ‘Reconstructing Heritage in the Aftermath of Civil War,’ *Journal of Intervention and Statebuilding* 7(2) (2013): 125–148.
- 5 Luke Moffett, Dacia Viejo-Rose and Robin Hickey, ‘Shifting the Paradigm on Cultural Property and Heritage in International Law and Armed Conflict,’ *International Journal of Heritage Studies* 26(7) (2020): 619–634.
- 6 Convention for the Safeguarding of the Intangible Cultural Heritage 2003, Article 2; Janet Blake, ‘Protection of Intangible Cultural Heritage in the Event of Armed Conflict,’ *Europa Ethnica* 74(3) (2017): 73–81; Gregory M. Mose, ‘The Destruction of Churches and Mosques in Bosnia-Herzegovina: Seeking a Rights-Based Approach to the Protection of Religious Cultural Property,’ *Buffalo Journal of International Law* 3(1) (1996): 180–208.
- 7 UNHRC, ‘Cultural Rights and the Protection of Cultural Heritage,’ *supra* n 2.
- 8 Kieran McEvoy, ‘Beyond Legalism: Towards a Thicker Understanding of Transitional Justice,’ *Journal of Law & Society* 34 (2007): 411–440.
- 9 Andrew Linklater, *The Problem of Harm in World Politics: Theoretical Investigations* (Cambridge: CUP, 2011).
- 10 Catherine Lu, *Justice and Reconciliation in World Politics* (Cambridge: CUP, 2017).

This article aims to contribute a ‘thicker’ understanding of the harm caused by attacks on cultural heritage and to explore the effectiveness of responses to those attacks. While acknowledging the grave harm that can result from the destruction of cultural heritage with ‘outstanding universal value,’ this article considers the relatively under-explored harms associated with the loss of locally significant ‘instruments, objects, artefacts and cultural spaces.’ The loss of ‘everyday’ heritage objects is a frequent accompanier to attacks against targeted groups, as evidenced for example in the destruction of mosques in Bosnia¹¹ and the widespread destruction of indigenous heritage in settler colonial states.¹² In this article, we centre the experience of the Cham, an Islamic minority group who were subjected to religious persecution and genocide during the Khmer Rouge regime in Cambodia.¹³ In particular, we consider the harm caused by the destruction of heritage associated with the Cham’s two ‘core identities’: their Islamic religious practice, and their Indigenous Cham history and language.¹⁴

METHODOLOGY

The article draws from fieldwork conducted in collaboration with colleagues in the Documentation Centre of Cambodia (DC-Cam) in March 2017.¹⁵ Over a two-week period we carried out focus groups and interviews with some 75 members of Cham communities in Phnom Penh, Kandal, Kampong Chhnang and Kampong Cham – areas known to have large Cham communities. By speaking with Cham people directly, we hoped to garner a more in-depth understanding of the nature of cultural heritage loss, as felt and described by the community. To hear from a range of voices, we arranged for open focus groups to be organised in community buildings (such as outside mosques or in school buildings), but also specifically sought meetings with survivors of the Khmer Rouge regime, past and present religious and community leaders, women’s groups and youth groups. We were also interested in responses to the Cham’s harm, including relevant case law and reparations awards made by the Extraordinary Chambers in the Courts of Cambodia (ECCC). We therefore interviewed survivors who were participating in that Court’s proceedings, government officials, ECCC practitioners and civil society actors engaged in reparation projects.¹⁶ Interviews were conducted in Khmer or English, with interpretation and translation

11 Mose, *supra* n 6.

12 See e.g., Novic, *supra* n 4; Damien Short, ‘Cultural Genocide and Indigenous Peoples,’ *The International Journal of Human Rights* 14(6) (2010): 833–848; Lindsey Kingston, ‘The Destruction of Identity: Cultural Genocide and Indigenous Peoples,’ *Journal of Human Rights* 14 (2015): 63–83.

13 This project builds on an established track record of researching transitional justice in Cambodia. The case study was therefore chosen both for its relevance to the research themes of cultural heritage loss and repair and for its feasibility as a site of research.

14 Kok-Thay Eng, ‘From the Khmer Rouge to Hambali: Cham Identities in a Global Age’ (PhD diss., Rutgers University, 2013).

15 This research obtained ethical approval from Queen’s University Belfast School of Law on 8 July 2016. See Cheryl Lawther, Rachel Killean and Lauren Dempster, ‘Working with Others: Reflections on Fieldwork in Postconflict Societies,’ *International Journal of Transitional Justice* 13(2) (2019): 387–397 for an in-depth analysis of the methods used and challenges associated with this project (alongside others).

16 As this is a qualitative study, the views expressed by our participants are not to be considered generally representative. Rather, they are the views of particular people at a particular moment in time.

provided by our Khmer colleagues when necessary.¹⁷ The transcripts were analysed using inductive and deductive thematic analysis, drawing from existing literature while allowing themes to emerge from the data.

Theoretical Framework

To develop a ‘thicker’ understanding of the Cham’s experience of cultural heritage loss and repair, we locate the experience of the Cham within Bernadette Atuahene’s property-loss framework of ‘dignity takings’ and ‘dignity restoration.’¹⁸ Drawn from the expansive literature on constitutional ‘takings’ of property by the state,¹⁹ Atuahene’s combined concepts of ‘dignity takings’ and ‘dignity restoration’ offer a ‘theoretical framework to examine involuntary property loss in diverse geographical settings and historical periods.’²⁰ ‘Dignity taking’ refers to situations where ‘the state takes property from a class of persons it considers to be sub-persons’ and the intentional or unintentional outcome is the dehumanization or infantilization of the individual or community.²¹ The related concept of ‘dignity restoration’ offers a means of framing effective responses to this harm, by considering remedies that seek to provide those dispossessed with ‘material compensation through processes that affirm their humanity and reinforce their agency.’²²

Dignity is a diffuse and contested concept.²³ In Atuahene’s framework, it is orientated towards an intrinsic understanding ‘that people have equal worth, which gives them the right to live as autonomous beings not under the authority of another.’²⁴ While such an understanding of autonomy is itself contested, for present purposes the power of Atuahene’s analysis lies in its ability to reveal broader human impacts of property loss beyond material deprivation. It addresses our attention to harms to dignity and identity that follow from (and, in some cases, are intended to flow from) the destruction of objects and spaces. This is consistent with Article 2 of the UNESCO Convention (2003), which expressly connects the ‘practices, representations, expressions, knowledge, [and] skills’ of a given community to their associated ‘instruments, objects, artefacts and cultural spaces.’ Atuahene’s framework usefully illuminates this connection,

17 On the value of translation being carried out by members of the research team, see Josephine Pui-Hing Wong and Maurice Kwong-Lai Poon, ‘Bringing Translation Out of the Shadows,’ *Journal of Transcultural Nursing* 21 (2010): 151–158.

18 First developed in Bernadette Atuahene, *We Want What’s Ours* (Oxford: OUP, 2014).

19 Most constitutional regimes allow for lawful expropriation of private property, subject to prescribed conditions, e.g., that property is taken for a public purpose, with just compensation: see generally Andries J. van der Walt, *Constitutional Property Clauses* (Cape Town: Juta, 1998).

20 Bernadette Atuahene, ‘Dignity Takings and Dignity Restoration,’ *Law and Social Inquiry* 41 (2016): 796–823, 817.

21 Atuahene, *supra* n 18 at 23.

22 Atuahene, *supra* n 20 at 818.

23 See e.g., Christopher McCrudden, ed., *Understanding Human Dignity* (Oxford: OUP, 2013); Marcus Düwell, Jens Braarvig, Roger Brownsword, and Dietmar Mieth, eds., *The Cambridge Handbook of Human Dignity* (Cambridge: CUP, 2014).

24 Atuahene, *supra* n 20 at 799–801.

allowing us to explore in greater depth the harms that result from destruction of locally significant property.

This article builds on a developing literature which uses the concept of ‘dignity taking’ to explore diverse experiences of property loss.²⁵ In the following sections we unpack Atuahene’s framework in greater depth, connecting it to ongoing debates within transitional justice about how to meaningfully respond to harm. By engaging the framework of ‘dignity taking’ with interviewees’ articulations of their harm, we develop a ‘thicker’ understanding of the harm caused by the destruction of the Cham’s ‘instruments, objects, artefacts and cultural spaces,’ drawing connections between heritage loss and attacks on dignity and identity. We then explore how a corresponding focus on ‘dignity restoration’ helps us to look beyond ‘institutional’ forms of transitional justice, while also drawing attention to unaddressed harms. Drawing from these analyses, we stress the importance of moving beyond a focus on the restitution and/or reconstruction of property, to develop a spectrum of interventions which reaffirm victims’ humanity, reinforce their agency and allow them to meaningfully reconnect with their heritage. Before turning to this analysis, we first situate the Cham experiences of property loss in the context of the Khmer Rouge’s policies of forced assimilation, religious persecution and genocide.

‘DIGNITY TAKINGS’ UNDER THE KHMER ROUGE

The Cham have been present in Cambodia for many centuries. They are often identified by their two ‘core identities’: their Islamic religious practice, and their Indigenous Cham history and language. When the Khmer Rouge seized power in 1975, the Cham constituted Cambodia’s largest minority group and over 100 mosques and religious schools existed around the country.²⁶ By the time the regime fell in 1979, an estimated 130 mosques had been demolished.²⁷ Khmer Rouge cadres had destroyed Qur’ans and other Islamic texts and confiscated or destroyed traditional modes of dress such as the sarong, fez and makhma.²⁸ This is exemplified by one interviewee: ‘the Qur’an was ruined or lost, there were many before the Khmer Rouge time ... when we returned, nothing [was] left.’²⁹ Following the Khmer Rouge’s seizing of the Cambodian capital of Phnom Penh, many Cham – alongside the rest of the population – were also removed from their homes through forced displacement.³⁰ Communities and families were often separated and sent to work in different areas of Cambodia and were forbidden from bringing most of their personal possessions with them.³¹ Describing this experience, interviewees told us: ‘we lost

25 Atuahene’s framework has been applied in scenarios as diverse as the removal of the Hopi people from their sacred lands, the Tulsa race riots, collectivization in communist Poland and the dispossession of Bedouin and Arab citizens in Israel: see the symposium in *Law and Social Inquiry* 41(4) (2016).

26 Case 002/02, Trial Judgment, 002/19-09-2007/ECCC/TC, 16 November 2018, para 3205.

27 Robert Headley, ‘The Society and Its Environment,’ in *A Country Study: Cambodia*, ed. Russell Ross (Washington, D.C., US Government Printing Office, 1987).

28 Farina So, *The Hijab of Cambodia* (Phnom Penh: DC-Cam, 2011).

29 Focus Group, Islamic Leaders and Cham Women, Phnom Penh, 16 March 2017.

30 Ben Kiernan, ‘Orphans of Genocide,’ *Bulletin of Concerned Asian Scholars* 20(4) (1988): 9–33.

31 Case 002/01, Trial Judgment, 002/19-09-2007/ECCC/TC, 7 August 2014, 230–316.

our personal property and our cultural property, from utensils to the mosque'; 'there was nothing remaining, they destroyed our properties and houses.'³²

As noted above, Atuahene conceptualizes 'dignity takings' as situations where property is taken from a class of persons considered to be 'sub-persons' and 'the intentional or unintentional outcome is dehumanization or infantilization.' Drawing from this conceptualization of harm, we now explore how the Cham's experience of 'takings' can be linked to processes of 'infantilization' and 'dehumanization,' by placing their experience of property loss within the context of the Khmer Rouge's revolutionary and genocidal policies.

Infantilization has been defined by Atuahene as robbing an individual or group of their autonomy, negating independence and failing to respect their full capacity to reason.³³ Others have expanded on this definition, observing that infantilization may recognize a group's humanity, but not their ability to determine their own future, and involves groups being 'kept under the authority of another without consent or through forced consent.'³⁴ Such a process is visible in the actions and policies of the Khmer Rouge, who systematically and violently took control over all aspects of the Cambodian population's lives.³⁵ Most pertinent to the 'takings' detailed above were policies prohibiting cultural and religious practices, abolishing private property through collectivization and introducing forced labour cooperatives. The regime was depicted as an all-knowing force, with the threat and use of torture and murder used to ensure compliance.³⁶ This authoritarian approach arguably infantilized the population, depriving them of autonomy, independence and the ability to determine their own future. As argued by Atuahene and others, the establishment of property regimes that deny the rights of owners and occupiers, when accompanied by deadly force, can alone constitute a 'dignity taking.'³⁷ It is therefore arguable that the concept of dignity taking is applicable to the experiences of the Cambodian population more broadly. However, the relevance of this framing for the Cham experience becomes more pronounced when we consider the distinct processes of dehumanization experienced by that group.

Contemporary publications from the Khmer Rouge era emphasize the perceived superiority and dominance of the 'Khmer race.'³⁸ The regime pursued a 'pure' atheistic and homogenous Khmer nation which manifested in a general prohibition on expressions of diversity and the attempted forced assimilation of minority groups. As a result, the Cham were instructed to adopt Khmer names and abandon their

32 Focus Group, Cham Women, Kandal, 18 March 2017; Focus Group, Cham Women, Svay Khleang, 21 March 2017.

33 Atuahene, *supra* n 20 at 801.

34 Craig Albert, 'No Place to Call Home,' *Chicago-Kent Law Review* 92 (2018): 817–840, 819.

35 See e.g., David Chandler, *Voices From S-21* (Berkeley: University of California Press, 2000); Ben Kiernan, *The Pol Pot Regime* (New Haven: Yale University Press, 2002); Loung Ung, *First They Killed My Father* (New York: Harper Collins, 2000); Chanrithy Him, *When Broken Glass Floats* (New York: Norton, 2000).

36 Alexander Hinton, *Why Did They Kill?* (Berkeley: University of California Press, 2005); Ben Kiernan, 'The Demography of Genocide in Southeast Asia,' *Critical Asian Studies* 35(4) (2003): 585–597.

37 Atuahene, *supra* n 18 at 31–32.

38 Case 002/02, *supra* n 26 at 3216.

language, costume, habits and religion.³⁹ During periods of forced displacement, Cham communities would be deliberately separated and merged with Khmer communities.⁴⁰ One interviewee described their experience of forced separation: 'this community before had about 700 families and they were separated . . . only one or two families met each other during the evacuation.'⁴¹ As noted by Cham scholar Farina So, this was a direct attack on the Cham's usual ways of living in closed micro-societies separate from the Buddhist majority.⁴² Women were also pressured to marry Khmer men, in an attempt to assimilate the group through marriage.⁴³ Although often enforced with threats and violence, many Cham resisted these processes of forced assimilation.⁴⁴ In response, a violent form of religious persecution emerged, implemented through purges, systematic mass arrests and killings.⁴⁵ Religious leaders, imams and religious teachers were specifically targeted, as observed by an interviewee: 'it seemed that they targeted the educated or those who knew about Islam.'⁴⁶

In addition to targeting those with a key role in preserving and transmitting Cham identity, the Khmer Rouge weaponized the Cham's identity as a tactic of dehumanization, forcing them to do things prohibited by their religion. For example, women were prohibited from covering their head and were forced to cut their hair. This was considered particularly violating, as Cham culture viewed women's long hair as a symbol of morality and marital fidelity.⁴⁷ As expressed by two interviewees: 'we cried when the Khmer Rouge forced us to cut our hair short. Since we were born, we had never cut our hair, so we cried, and we suffered.'⁴⁸ Cham were also forced to eat pork and non-halal food:

Not only did the Khmer Rouge force us to no longer practice our religion but they also forced us to do many things which are against Islam. For example, eating pork; it is very serious for me that Khmer Rouge did that to the community.⁴⁹

39 Ysa Osman, *Oukoubah* (Phnom Penh: DC-Cam, 2002), 95; Chantou Boua, 'Genocide of a Religious Group,' in *State Organized Terror*, ed. P. Timothy Bushnell, Vladimir Shlapentokh, Christopher Vanderpool, and Jeyaratnam Sundram (Oxford: Westview Press, 1991), 227–239; David Hawk, 'International Human Rights Law and Democratic Kampuchea,' *International Journal of Politics* 16(3) (1986): 3–38, 15.

40 Case 002/02, supra n 26 at 3264.

41 Focus Group, Islamic Teachers, Chroy Changva, 16 March 2017.

42 So, supra n 28 at 16.

43 Theresa De Langis, Judith Strasser, Thida Kim, and Sopheap Taing, *'Like Ghost Changes Body': A Study on the Impact of Forced Marriage under the Khmer Rouge Regime* (Phnom Penh: Transcultural Psychosocial Organisation, 2014).

44 Ysa Osman, *The Cham Rebellion* (Phnom Penh: DC-Cam, 2006).

45 Case 002/02, supra n 26 at 3347.

46 Focus Group, Islamic Leader and Cham Women, Phnom Penh, 16 March 2017. Philipp Bruckmayr, 'Cambodian Muslims, Transnational NGOs, and International Justice,' *Peace Review* 27 (2015): 337–345, 338, highlights the extremely low (10%) survival rate of Islamic leaders and teachers.

47 So, supra n 28 at 62.

48 Focus group, Cham Community, Kampong Tralach, 19 March 2017.

49 Interview, Islamic Leader, Ponnea Leu, 12 March 2017.

The frequency with which this harm was raised by participants and the severity of harm expressed suggest that being forced to carry out prohibited acts resulted in a form of ‘moral injury,’ meaning feelings of trauma and identity loss caused by perpetrating acts that violate core ethical and moral beliefs.⁵⁰

Cham have also spoken of being made to feel inferior and humiliated, and of being mocked for the historic loss of the Kingdom of Champa and their minority status in Cambodia.⁵¹ Their religious items were frequently profaned as well as destroyed: Qur’ans and other Islamic books were burned, thrown in the river or used as toilet paper, while mosques were used to house pigs.⁵² Such humiliations used the Cham’s identity as a source of violence as well as a target, othering them, reducing them to ‘sub-persons’ and creating the circumstances in which their extermination was possible.⁵³

Thus, the ‘takings’ experienced by the Cham can be situated not only within broader policies of collectivization and authoritarian control, but within the Khmer Rouge’s attempt to eradicate them as a group, first through forced assimilation and latterly by targeted extermination. Indeed, if dehumanization is understood as classifying a person or group as ‘an unfit participant of the social contract,’ then genocidal use of force can be interpreted as the ‘most extreme form of extinguishing one’s humanity.’⁵⁴ Having explored the Cham’s experience through the lens of ‘dignity takings,’ the following section interrogates the connections between heritage loss and the feelings of harm expressed by interviewees.

REFLECTIONS ON THE HARMS OF DIGNITY TAKINGS

Atuahene has expressed a hope that scholars ‘can rescue property’s political, cultural, emotional, and social value from the sizeable shadow cast by the overly dominant focus on its economic value.’⁵⁵ In doing so, her framework resonates with a set of theoretical positions in property theory which emphasize that property is premised on a broad and incommensurable range of human values, and implicates deeper moral and political ideas about just distributions and just social relationships.⁵⁶ A particular line of thought, drawn from the work of Radin, highlights property’s relationship to personhood, and the capacity of objects to contribute to self-

50 See e.g., Rita Nakashima and Gabriella Lettini, *Soul Repair: Recovering from Moral Injury after War* (Boston: Beacon Press, 2012).

51 So, supra n 28 at 55. The Kingdom of Champa existed until the 17th century, when it became part of Vietnam. See e.g., Georges Maspero, *The Champa Kingdom* (Banglamung: White Lotus Press, 2002).

52 Tallyn Gray, ‘Re-Imagining the Community?’ *South East Asia Research* 23(1) (2015): 101–119, 105.

53 For the connections between humiliation, dehumanisation and genocide, see Evelin Lindner, ‘Genocide, Humiliation and Inferiority,’ in *Genocides by the Oppressed*, ed. Nicolas Robins and Adam Jones (Bloomington: Indiana University Press, 2009).

54 Atuahene, supra n 18 at 31.

55 Bernadette Atuahene, ‘Takings as a Sociolegal Concept,’ *Annual Review of Law and Social Science* 12 (2016): 171–197.

56 Gregory S. Alexander, Eduardo M. Peñalver, Joseph W. Singer, and Laura S. Underkuffler, ‘A Statement of Progressive Property,’ *Cornell Law Review* 94 (2009): 743; and in the specific context of takings, Timothy M. Mulvaney, ‘Property-as-Society,’ *Wisconsin Law Review* (2018): 911–970. Theoretical explorations on the relationship between people and objects can be found within literature on the socio-semiotic roles of objects; see e.g., Stephen H. Riggins, ed., *The Socialness of Things* (Berlin: De Gruyter Mouton, 1994).

determination.⁵⁷ While generally this supplies an argument for developing more stringent protections for some forms of property, it has particular applications in the context of culturally significant property.⁵⁸ Such property can be infused 'with deep meaning, rendering these material things sacred.'⁵⁹ Citing Radin, Atuahene argues that the loss of or estrangement from property which has become bound up with a sense of identity can have serious emotional and cultural consequences.

Our conversations with Cham communities suggested that the loss of cultural property resulted in feelings of harm that went beyond the loss of material goods. Interviewees considered attacks on their cultural property as an attack on their life and the life of their community, signalling that such property had pronounced *emotional value*. As one interviewee expressed, 'it's like they hold our mosque hostage or it's like they arrest our children. I feel suffering.'⁶⁰ Such expressions reflect Radin's finding that 'property has nonmaterial value based upon sentimental attachments,'⁶¹ as well as Atuahene's call to recognize the emotional damage caused through attacks on culturally significant objects. As noted in other contexts, this can be exacerbated when the loss of property is accompanied by other physical, emotional and moral harms, resulting in a degradation of 'the dignity of people and communities ... undermining the systems of ideas, beliefs and values that support identities.'⁶²

These links between property, dignity and identity became more pronounced when interviewees discussed the *expressive value* they placed on targeted property. While the loss of culturally significant items was expressed in terms that went beyond material loss, we noted that little intrinsic value was placed on the specific physical objects themselves – meaning it was rarely the loss of a particular copy of the Qur'an, or a particularly structured mosque, that was mourned. For some of our interviewees, culturally significant items were instead valued because of their capacity to allow expression of the community's religious faith and identity. As expressed by one interviewee: 'the design is not that important ... the old and the new is the same; they represent Islam.'⁶³ This expressive value of property confirms the significance of things for the community but locates that significance in function or practice rather than the intrinsic or aesthetic quality of the asset. As Gerstenblith notes, in the course of distinguishing 'cultural property' from 'art,' what matters is that the property in question 'embod[ies] some expression of that group's identity, regardless of whether the object has achieved some universal recognition of its value beyond that group.'⁶⁴ Borrowing from Merryman, the point is that such property matters because 'cultural objects nourish a sense of community, of participation in a

57 Margaret Radin, 'Property and Personhood,' *Stanford Law Review* 34 (1982): 957–1015.

58 Kristen A. Carpenter, Sonia K. Katyal, and Angela R. Riley, 'In Defense of Property,' *Yale Law Journal* 118 (2009): 1022–1125, moving from Radin's notion of individual personhood to establish a conception of 'grouphood' in the context of developing a more nuanced understanding of ownership as a means of protecting indigenous cultural heritage.

59 Atuahene, *supra* n 55 at 172.

60 Interview, Islamic Leader, Svay Khleang, 21 March 2017.

61 Radin, *supra* n 57, cited in Atuahene, *supra* n 55 at 172.

62 Diana Guzmán-Rodríguez, 'Dignity Takings and Dignity Restoration,' *Chicago-Kent Law Review* 92 (2018): 871–904, 883.

63 Interview, Religious Leader, Kandal, 12 March 2017.

64 Patty Gerstenblith, 'Identity and Cultural Property,' *Buffalo University Law Review* 75 (1995): 569–570.

common human enterprise.⁶⁵ Thus, the destruction was perceived as a targeted attack on that expression of identity and sense of 'imagined community'.⁶⁶ As put by one interviewee, 'the Khmer Rouge hate the Cham the most, because they burn the Qur'an'.⁶⁷ This expressive value became further evident through the connections made by interviewees between the loss of their physical property and broader attacks on their identity as a group. When asked about the loss of cultural property, interviewees would explicitly connect the loss of mosques, books and clothing to policies prohibiting their religious practices, being forced to act in ways contrary to their beliefs and the Khmer Rouge's targeted killings of their religious leaders and teachers.

Linked to this framing of expressive value was the substantial *social value* of property, as things which establish 'spatial boundaries in which interpersonal and community engagement occurs'.⁶⁸ Physical property was often valued for its ability to facilitate community gathering and the practice of faith, highlighting its role in fostering a sense of shared identity inside the Cham group, as well as communicating it outwards. The links between religious identity and togetherness were expressed, for example, in the ways in which interviewees framed their experience of displacement and separation. As described by one interviewee:

the Khmer Rouge also cut off or lessened relationships between families, like between parents and children, because they were separated by labour: children unit and adult unit. That's why we were not able to communicate with each other quite often. Also, we dared not to communicate even [when] we saw each other. That's why it was very hard during that time in terms of [maintaining] religious practices and also personal life.⁶⁹

Gray has highlighted the importance of community practices as a means through which the Cham accessed religious knowledge, due to the lack of widespread religious textual knowledge.⁷⁰ Through displacement, the Cham were deprived of their property rights, and through that deprivation separated from the social ties, rituals and material objects that defined and sustained their 'imagined community.'

These harms arguably constitute what Atuahene has termed 'community destruction,' defined as 'when a community of people is dehumanized or infantilized, involuntarily uprooted, and deprived of the social and emotional ties that define and sustain them.'⁷¹ Through this term, Atuahene highlights one of the possible impacts of dignity taking, noting that when people are 'separated from their cultural anchors, faith communities, jobs, families, neighbours, and schools, they are robbed of vital sources of interdependence – and hence their

65 John Henry Merryman, 'The Public Interest in Cultural Property,' *California Law Review* 77 (1989): 339–364, 349.

66 '... imagined because the members ... will never know most of their fellow-members, meet them, or even hear of them, yet in the minds of each lives the image of their communion.' Benedict Anderson, *Imagined Communities* (New York: Verso, 1991), 15.

67 Focus Group, Cham Women, Svay Khleang, 22 March 2017.

68 Atuahene, *supra* n 55 at 172.

69 Focus Group, Cham Women, Kandal, 18 March 2017.

70 Gray, *supra* n 52.

71 Atuahene, *supra* n 20 at 801.

autonomy.⁷² Building on the work of Fullilove, Atuahene notes that community destruction can result in ‘root shock,’ meaning ‘the traumatic stress reaction to the destruction of all or part of one’s emotional ecosystem.’⁷³ When occurring in the context of genocide, such harm resonates with Card’s concept of ‘social death,’ coined to describe the intergenerational ‘natal alienation’ that can follow the loss of cultural heritage.⁷⁴ Such harms were reflected in interviewees’ accounts. The targeting of the Cham’s property, when combined with prohibition of religious and cultural expression and the deliberate targeting of their teachers and leaders, created a shortage of human resources and capacity in the aftermath of the regime. This made it very difficult for the Cham to collect and pass on their cultural knowledge and sustain a sense of connection to their traditions. As expressed by one interviewee: ‘imagine that those who were educated left and [left behind] only those who didn’t know, and this is like living in the darkness.’⁷⁵ As we will explore below, the continuing impacts of this community destruction have implications for processes of dignity restoration.

RESTORATION AFTER THE KHMER ROUGE

The corollary of a dignity taking is dignity restoration, by which Atuahene refers to the range of multi-faceted processes and systems that might contribute to remedying dignity takings. Thus, dignity restoration must not only return or compensate lost property but also address victims’ experiences of dehumanization (by affirming their humanity), infantilization (by reinforcing their agency) and community destruction (by allowing them to connect with their community and heritage). Atuahene recognizes that whether or not such restoration occurs is context-specific and contingent; that it may be iterative, as an outcome of ‘multiple rounds of dignity restoration’; and that ‘the ultimate goal of dignity restoration may change as time progresses, conceptions of justice evolve, and material conditions shift.’⁷⁶ Whichever way it is effected, the point is that restoring dignity involves addressing the harms to equality of worth, autonomy and interdependence that have been effected by property loss.

The concept of ‘dignity restoration’ unites several contemporary developments and debates within transitional justice with regards to forms of restoration, victim participation and responsibility for repair. In the context of form, Atuahene is careful to distinguish ‘dignity restoration’ from the narrower category of ‘reparations,’ defining the latter as the right to have specific property returned (or to receive alternative compensation). Certainly, restitution and/or compensation have traditionally been viewed as the appropriate response to the loss of cultural property.⁷⁷ However, Atuahene’s call to incorporate broader

72 Ibid.

73 Mindy Thompson Fullilove, *Root Shock* (New York: Ballantine Books, 2004), 11.

74 Claudia Card, ‘Genocide and Social Death,’ *Hypatia* 18(1) (2003): 63–79.

75 Focus Group, Islamic Leaders, Phnom Penh, 16 March 2017.

76 Atuahene, *supra* n 20 at 814.

77 Irini Stamatoudi, *Cultural Property Law and Restitution* (Cheltenham: Edward Elgar, 2011).

measures of repair resonates with increased acceptance that reparations should encompass symbolic reparations, acknowledgment, rehabilitation, measures of satisfaction and guarantees of non-repetition.⁷⁸ Her focus on restoring the autonomy, agency and interconnectedness of dispossessed populations in a broader social sense also finds parallels in calls for ‘reparative development,’⁷⁹ ‘non-recurrence’⁸⁰ and ‘transformative justice,’⁸¹ which share a focus on forward-looking measures which address underlying structures of inequality and othering. In relation to victim participation, Atuahene highlights the value of participation as a means of affirming humanity and combating the impacts of dehumanization, a view in keeping with the now substantial literature advocating for greater victim participation in transitional justice processes.⁸² Finally, Atuahene invites us to look beyond institutionalized or formalized measures of repair, considering, for example, measures delivered by non-state actors, and efforts which are primarily internal to the group. Such arguments find resonance in calls within transitional justice to consider the role of diverse groups in addressing the legacies of violence.⁸³

Taken as a whole, dignity restoration can encompass a broad array of measures, delivered by a range of actors that may, intentional or unintentionally, address the harms arising from a dignity taking. In the following sections, we explore how Atuahene’s framework enables us to see processes of land reform and the re-introduction of religious freedom as unintentional forms of dignity restoration. We highlight how an understanding of the expressive and social value of lost heritage helps us better comprehend the wishes of the communities in terms of restitution and repair. We then turn to what is to date the only formalized transitional justice response to the Cham’s harm, the ECCC. By analysing the ECCC’s reparation awards through the framework of dignity takings and restoration, we highlight the failure of existing measures to sufficiently redress the legacy of community destruction.

- 78 See e.g., *Prosecutor v. Al Mahdi*, Reparations Order, Trial Chamber VIII, ICC-01/12-01/15, 17 August 2017; Francesca Capone, ‘An Appraisal of the Al Mahdi Order on Reparations and Its Innovative Elements,’ *Journal of International Criminal Justice* 16(3) (2018): 645–661.
- 79 Lauren Marie Balasco, ‘Reparative Development,’ *Conflict, Security & Development* 17(1) (2017): 1–20; Patrick Vinck and Phuong Pham, ‘Ownership and Participation in Transitional Justice Mechanisms,’ *International Journal of Transitional Justice* 2(3) (2008): 398–411.
- 80 Naomi Roht-Arriaza, ‘Measures of Non-Repetition in Transitional Justice,’ in *From Transitional to Transformative Justice*, ed. Paul Gready and Simon Robins (Cambridge: CUP, 2014), 105; Kieran McEvoy, ‘Travel, Dilemmas and Nonrecurrence,’ *International Journal of Transitional Justice* 12(2) (2018): 185–193.
- 81 Padraig McAuliffe, *Transformative Transitional Justice and Malleability of Post-Conflict States* (Cheltenham: Edward Elgar, 2017); Colleen Murphy, *The Conceptual Foundations of Transitional Justice* (Cambridge: CUP, 2017).
- 82 Kieran McEvoy and Kirsten McConnachie, ‘Victims and Transitional Justice,’ *Social and Legal Studies* 22(4) (2013): 489–513; Yvette Selim, ‘The Opportunities and Challenges of Participation in Transitional Justice,’ *Journal of International Development* (2017): 1123–1148; Simon Robins, ‘Whose Voices? Understanding Victims’ Needs in Transition,’ *Journal of Human Rights Practice* 1(2) (2009): 320–331.
- 83 Ron Dudai, ‘Closing the Gap: Symbolic Reparations and Armed Groups,’ *International Review of the Red Cross* 93(833) (2011): 783–803; Paul Gready and Simon Robins, ‘Rethinking Civil Society and Transitional Justice,’ *The International Journal of Human Rights* 21(7) (2017): 956–975.

A Story of Unintentional Dignity Restoration

In the years following the ousting of the Khmer Rouge, neither dispossession nor resettlement were addressed systematically. For the Cham, resettlement was slow and driven by members of the communities, operating within the larger context of the regime's aftermath. In the immediate aftermath, Cambodia was a long way from recovery. Starvation and malnutrition were widespread, and there were shortages of drinking water, electricity, transport, medicines, schools and other essentials.⁸⁴ It was necessary to rebuild almost every aspect of life, without intervention or assistance from the state. For those forcibly displaced during the Khmer Rouge, this included trying to find their way home. This too was slow. One Cham woman told us:

We came back step by step; we made a carriage for keeping rice and we left with it . . . we cooked, ate and slept along the way until we found our community. I arrived in the village in 1981. There was nothing remaining; the Khmer Rouge destroyed our properties, the community was covered by bamboo trees and I did not dare to walk around because it was quiet . . . First, I started a small business from nothing . . . we didn't even have clothes to wear and we almost could not find a cooking pot to cook rice.⁸⁵

Where resettlement did occur, it was effected through non-specific legal institutions. This process began with the solidarity group structures of the interim Vietnamese government in the 1980–1989 period.⁸⁶ The government organized villagers into *krom samakki* ('solidarity groups'), small groups of 10–15 families which owned their land collectively. Each group retained control over the produce of its land, which created confidence in the system and provided for a return to family living and cooking.⁸⁷ For the Cham, this seems to have been consistent with their previous practice of living prior to the regime. In the years that followed, interviewees from different communities spoke of living collectively, and of rebuilding their homes and communal religious property: 'After the regime people lived in a unity group. They took wood from the old houses to build a mosque; this was how they restored their culture';⁸⁸ 'We tried to build our life with our bare hands and tried to build a hut and then build a Sorav [small religious building] close by.'⁸⁹

This process was later supported by changes to the Constitution of Cambodia, when the law recognized private ownership of things, including religious land and buildings.⁹⁰ Private ownership became possible following the promulgation of the 1992 Land Law, which made provision both for formal ownership supported by documents of title, and for possession to become registered as ownership if undisturbed for five years,⁹¹ a title-quieting measure which, divorced from its context,

84 Ben Kiernan, 'Kampuchea 1979–81,' *Southeast Asian Affairs* 1 (1982): 167–195.

85 Focus Group, Cham Women, Svay Khleang, 22 March 2017.

86 Sub-decree No 25 (1989).

87 Kiernan, *supra* n 84 at 176.

88 Interview, Islamic Leader, Svay Khleang, 22 March 2017.

89 Focus Group, Islamic Leaders and Teachers, Ponnhea Leu, 12 March 2017.

90 See Khean Un and Sokbuntheoun So, 'Land Rights in Cambodia,' *Pacific Affairs* 84 (2011): 290–294.

91 Land Law 1992, Articles 72, 73, 74 and 75.

reads normally and naturally as a basic provision of property law. The 1993 Constitution declared the property rights of Cambodian citizens in a manner consistent with international norms: Article 44 rehearses the right to own property, including a standard takings clause permitting expropriation ‘only in the public interest’ and where there is ‘fair and just compensation in advance.’ The 2001 Land Law built upon and revised these positions, with a focus on land that included provision for collective ownership of religious buildings by those of Buddhist and other faiths.⁹²

While there is nothing particularly restoration-oriented about these provisions, they appear to have facilitated Cham resettlement of villages and re-engagement with religious practice. Participants spoke of how religious leaders and committees managed the mosques on behalf of the community, and had an understanding of collective property that resonated with Articles 20–22 of the 2001 Land Law:

This mosque doesn’t belong to an individual because even though the community leader initiated the construction, it was built by the community. The leader of the community is representative of the community but in general it belongs to everybody in the village.⁹³

A further sense of restoration is added when it is recalled that this practice of collective ownership is consistent with how the Cham had managed their property prior to the regime. This point was highlighted to us by a senior Islamic leader:

Before the war, they also have management, they have mufti [Islamic counselor]. Mostly, the mosque is built by themselves, by the community . . . At that time, our Cham people can raise funds within the community to build a very big mosque.⁹⁴

This reorganization of community and reintroduction of religious property management highlight a community-driven recovery process, in which Cham communities worked together to rebuild what they could and to re-establish the kinds of societal structures that the Khmer Rouge had destroyed. In the context of these incremental stories of rebuilding and resettling, the formal property law mechanisms appear as an external overlay that provided co-incidental support for the restoration efforts already underway on the ground. The implication of the Cham story is that, while dignity restoration places an emphasis on process, and oftentimes that process emerges specifically from the state, dignity restoration can also occur as a hybrid of specific and non-specific intervention, driven by the impacted community itself and supported indirectly by a general system of property law.⁹⁵

We might go further and argue that the Cham case study suggests that dignity restoration can be – in part – facilitated though ‘ordinary’ legal protection delivered by standard constitutional protections for property. Such an argument would not doubt

92 Land Law 2001, Articles 20–22.

93 Interview, Islamic Leader, Ponnhea Leu, 12 March 2017.

94 Interview, Islamic Leader, Phnom Penh, 16 March 2017.

95 On the value of community development in furthering human rights, see Jim Ife, *Human Rights from Below* (Cambridge: CUP, 2010).

that property serves to recognize, value and respect human dignity – on the contrary, it would suggest that property institutions are valuable precisely because they enable the realization of broader social values and the expression of individual and collective identity. This would include the potential for ordinary property institutions to counteract the harms of property loss and the impacts of deeply embedded practices of infantilization – not because property rules are expressly framed to address these harms, but rather because of the capacity of property simultaneously to promote autonomy and foster interdependence, and thus to enable action at the level of the community to reconstruct social anchors and collective practices. On this view, property rules are not by themselves an antidote for the ‘root shock’ occasioned by the systematic demolition of culture and community, but they can – in some circumstances – create and maintain the conditions for recovery.

This recovery-supporting aspect of property law takes on a further dimension when we recall the expressive value of cultural property in the eyes of our interviewees, and its related emotional and social value. As we noted above, the difference between the intrinsic quality and their extrinsic function for a community frequently emerged in our fieldwork. In the context of dignity restoration, this was most evident in discussions about the rebuilding of mosques. Interviewees often reflected on the community’s desire to rebuild mosques and to have a place to engage in religious practice,⁹⁶ reflecting the social value of such spaces. However, the communities we spoke with rarely attached particular significance to rebuilding mosques in the style that they had been in before the regime. Rather, it seemed that participants prioritized having a space to gather, and some physical representation of their religion.⁹⁷ How a mosque should look was a matter for community deliberation and discussion,⁹⁸ and was not necessarily driven by any attempt to specifically reclaim a physical representation of the past. Neither did it matter whether the mosque was rebuilt on the specific site of a mosque that had been destroyed. Indeed, in some communities we visited, the mosque had been (or was currently being) relocated, with development reasons generally having to do with the expansion of the community rather than perceptions of the significance of a site or place.⁹⁹

Inasmuch as the values placed on property will shape the experience of harm when it is lost, these values should also have a bearing on the implementation of dignity restoration, and they will certainly shape the specific demands of a community in terms of restoration. In our discussions with Cham communities, we were frequently struck by a particular sense of satisfaction in the ability to meet and practise their faith publicly: ‘we thank the government for allowing us freedom of religion’;¹⁰⁰

96 Requests for financial support for mosques and religious buildings were voiced in: Focus Groups with Cham Women and Civil Parties, Svay Khleang, 21–22 March 2017; Focus Group, Cham Women, Cham Leu, 18 March 2017; Focus Group, Islamic Leaders and Community, Kampong Tralach, 19 March 2017.

97 Focus Group, Cham Women, Cham Leu, 18 March 2017; Focus Group, Cham Community, Kampong Tralach, 19 March 2017.

98 Interview, Islamic Leader, Ponnhea Leu, 12 March 2017: ‘We cooperated with villagers to design the mosque. When people agree on the design, we start project. If not, we have to design new one.’

99 Although this issue did not arise in our own fieldwork, tensions have arisen in some communities around whether to preserve or replace mosques. See Poppy McPherson and Mom Kunthear, ‘As Mosques Are Replaced, Cham Minority Could See Heritage Disappear,’ *Phnom Penh Post*, 1 November 2013.

100 Focus Group, Islamic Teachers, Kandal, 12 March 2017.

‘now we live freely, in terms of religion . . . that is very important.’¹⁰¹ These freedoms had been taken from them under the Khmer Rouge regime and physically and emotionally experienced in the destruction and desecration of mosques and other forms of property loss, which were felt and understood as personal harms of a deep and invasive kind. The reclaiming and rebuilding of property mattered for their expressive effects and social value, consisting in the capacity for buildings to facilitate meeting, the recovery of religious practice and instruction and so the expression of religious and community identity.¹⁰²

To the extent that this capacity for expression of identity was created by ordinary rules about property and religious freedoms, it can be regarded as ‘unintentional’ dignity restoration which nonetheless affirms humanity and reinforces agency. Indeed, one advantage of applying Atuahene’s framework is exactly that, in supporting a ‘thicker’ understanding of the harms experienced, we develop a correspondingly rich sense of restoration work outside of the specific interventions of organized transitional justice frameworks. In the following section, we turn to a more formalized institutional response to the Cham’s harms, namely the Extraordinary Chambers in the Courts of Cambodia.

Institutional Responses to Dignity Takings

The ECCC was established in 2003 through an agreement between the Royal Government of Cambodia and the UN.¹⁰³ It is mandated with prosecuting senior leaders and those most responsible for crimes perpetrated during the Khmer Rouge regime, while its civil party participation system allows victims to participate as parties and claim reparations for their harms. In this section we explore the extent to which the Court can be considered as having contributed to dignity restoration for the Cham through judicial acknowledgement, participation and reparation.

The ECCC has completed three trials to date. The first, Case 001, was against the former Chairman of the notorious Security Centre S-21 and focused on a relatively small range of victims and crimes.¹⁰⁴ The second and third, Cases 002/01 and 002/02, ultimately convicted two surviving Khmer Rouge senior leaders: Nuon Chea and Khieu Samphan. Over the course of two judgments, the ECCC determined that the two accused had perpetrated a range of crimes against the Cambodian population, including crimes against humanity and grave breaches of the Geneva Conventions.¹⁰⁵ In Case 002/02 the Trial Chamber found that the accused had perpetrated additional crimes against specific sub-groups, including the crime of persecution on political, religious and racial grounds, and the crime of genocide against the ethnic Vietnamese and (in the case of Nuon Chea) the Cham.

101 Focus Group, Cham Women, Kandal, 12 March 2017.

102 On the importance of religious freedom for the exercising of cultural rights, see A/HRC/31/59, *supra* n 2 at 21.

103 Agreement between the UN and the Royal Government of Cambodia concerning the Prosecution under Cambodian Law of Crimes Committed during the Period of Democratic Kampuchea, 29 April 2005, 2329 UNTS 117.

104 *Case 001*, Trial Judgment, 001/18-07-2007-ECCC/TC, 26 July 2010; *Case 001*, Appeal Judgment, 001/18-07-2007-ECCC/SC, 3 February 2012.

105 *Case 002/01*, *supra* n 31; *Case 002/02*, *supra* n 26.

In considering the crimes committed against the Cham, the Trial Chamber made explicit reference to the processes through which the group were dehumanized and deprived of their religious freedoms and cultural heritage. For example, it highlighted processes of targeted transfer through which the Cham were separated from one another, acknowledging that prior to their displacement, the Cham people had been living in their respective communities for generations.¹⁰⁶ The Chamber also highlighted the shutting down of mosques, the prohibition of traditional clothes, religious practice and the Cham language, as well as incidences of Cham being forced to eat pork and cut their hair.¹⁰⁷ It noted that the consequence of this was that the Cham were unable to preserve their religious and cultural identity, and that this policy crystallized into one of specific genocidal intent.¹⁰⁸ The Chamber acknowledged that the abandonment of religion and religious traditions caused profound emotional trauma, and the loss of identity.¹⁰⁹ These findings offer judicial recognition of the dignity takings experienced by the Cham, including the loss of physical manifestations of their culture, infantilization through collectivization and authoritarianism and dehumanization through a policy of genocide.

Within transitional justice practice it is recognized that while insufficient alone, criminal judgments may play an important role in acknowledging harm and may in some cases contribute towards reparations.¹¹⁰ This notion has also gained traction within the dignity takings literature. Discussing responses to the dignity takings experienced by the Jewish population in the Netherlands and France, Veraart notes that 'the idea that dignity could be restored without public recognition of that particular suffering of concrete victim groups' has long been abandoned.¹¹¹ Citing Benhabib, he draws attention to the distinction between recognizing the dignity of the generalized other, based on 'what we, as speaking and acting rational agents, have in common,' and the dignity of 'concrete others' which derives from their 'concrete histories, particular identities, and social-affective constitutions.'¹¹² This formulation of dignity restoration resonates with theories of 'thick' recognition as a means of building long-term peace in postconflict societies.¹¹³ Contrasted with 'thin' recognition, which can be satisfied by recognizing another's status as an 'independent, sovereign entity' or 'universal person' with legal rights, 'thick' recognition refers to 'having

106 Case 002/02, *supra* n 26 at 3210; 3337; 3264; 3268.

107 *Ibid.*, 3208; 3232–3235; 3239; 3253.

108 *Ibid.*, 3218; 3347.

109 *Ibid.*, 4450.

110 E.g., UN Commission on Human Rights, Resolution on Impunity, 25 April 2001, UN Doc. E/CN.4/RES/2001/70; IACtHR, *Case of Cesti-Hurtado v. Peru*, Judgment (Reparations and Costs) 31 May 2001.

111 Wouter Veraart, 'Two Rounds of Postwar Restitution and Dignity Restoration in the Netherlands and France,' *Law and Social Inquiry* 41(4) (2016): 956–972, 966.

112 *Ibid.*, 965, citing Seyla Benhabib, *Situating the Self* (New York: Routledge, 1992), 159.

113 Pierre Allan and Alexis Keller, *What Is Just Peace?* (Oxford: OUP, 2008); Alexander Wendt, 'Why a World State Is Inevitable: Teleology and the Logic of Anarchy,' *European Journal of International Relations* 9(1) (2003) 491–542.

respect for the features that make a subject unique,' including their 'identity and history.'¹¹⁴ As experiences of harm can become part of that identity and history, 'thick' recognition necessitates acknowledgment of those harms.¹¹⁵

Turning to the Cham, the restoration of property and religious rights can be framed as 'thin' recognition, acknowledging the dignity of the 'generalized' or 'universal' other as a 'sovereign entity with rights.' However, such rights do little to recognize the Cham's specific history of lost heritage and dehumanization. By recognizing the Cham's 'history of suffering,' the Court acknowledges and condemns the experience of the Cham as 'concrete others.' Although 'thick' recognition goes beyond legal rights and judicial findings, this judicial acknowledgment may contribute to a broader recognition of the identity, feelings and experiences of the group. Indeed, interviewees spoke of the need for 'accountability, so that people feel their suffering is recognised.'¹¹⁶ Others linked the trials to the specific attacks on Cham identity: 'I am very happy to see the senior leaders of the Khmer Rouge in the trial because at that time all religion was banned, and they forced us to eat pork.'¹¹⁷

The ECCC offered survivors the ability to participate in the proceedings, either as complainants or as civil parties; this included members of the Cham community.¹¹⁸ Interviewees who had participated as civil parties were generally positive: 'it was a positive experience for me to visit the ECCC; it showed that we have the privilege of going to court, and it was satisfying to give the testimony.'¹¹⁹ While the civil party participation system has faced numerous challenges, this positivity is largely mirrored in other studies.¹²⁰ As noted by Atuahene and others, bestowing rights and giving people access to formal legal processes can be dignity enhancing, and can remedy the systematic group harms that led to the dehumanization at the core of the dignity takings.¹²¹ Reflecting the development of procedural justice theories within transitional justice scholarship, dignity restoration underlines the procedural dimensions

114 Lisa Strömbom, 'Thick Recognition: Advancing Theory on Identity Change in Intractable Conflicts,' *European Journal of International Relations* 20(1) (2014): 168–191, 171.

115 Ibid., 175.

116 Focus Group with Cham Students, Phnom Penh, 14 March 2017.

117 Focus Group with Civil Parties, Svay Khleang, 21 March 2017.

118 While demographic information about complainants and civil parties is not available, DC-Cam have indicated that they filed 200 complaints on behalf of the Cham community (see http://d.dccam.org/Projects/Tribunal_Response_Team/Victim_Participation/Victim_Participation.htm), and at least 46 civil parties were declared admissible in the context of the treatment of the Cham in Case 002 (this may have increased following appeals). See Case 002, Closing Order, 002/19-09-2007/ECCC/OCIJ, 15 September 2010, 790.

119 Focus Group, Civil Parties, Svay Khleang, 21 March 2017.

120 See e.g., Phuong Pham, Patrick Vinck, Michelle Balthazard, and Sokhom Hean, *After the First Trial* (Berkeley: University of California, 2011); Timothy Williams, Julie Bernath, Boravin Tann, and Somali Kum, *Justice and Reconciliation for the Victims of the Khmer Rouge?* (Phnom Penh: CSHL, 2018).

121 Atuahene, *supra* n 14 at 814. See also Lars Waldorf, 'Legal Empowerment in Transitions,' *International Journal of Human Rights* 19(3) (2015): 229–241, cf. Arnaud Kurze, Christopher Lamont and Simon Robins, 'Contested Spaces of Transitional Justice,' *International Journal of Human Rights* 19(3) (2015): 260–276.

of remedies, which are fundamental for victims to reaffirm their humanity and agency.¹²²

The ECCC also recognized a number of externally funded projects as ‘reparations,’ two of which related specifically to the experience of the Cham. The first was a Community Media Project comprising two films, an exhibition, a website and a blog, designed to educate communities about the treatment of the Cham. The second comprised a mobile exhibition discussing the experiences of the Cham and ethnic Vietnamese during the regime, designed to provide opportunities for ‘intergenerational dialogue’ about the treatment of minority groups. Both were framed as projects ‘aimed at guaranteeing non-repetition’ by acknowledging harm, documenting experiences, raising awareness about their treatment and promoting non-discrimination in order to prevent the recurrence of crimes against the group.¹²³ Due to the unique nature of the Court’s reparation mandate, which requires reparations to be fully funded prior to judgment being given, the reparation projects specific to the Cham had already been completed by the time our research took place. Yet, civil party interviewees were often unaware of these projects, suggesting that such measures had relatively limited impact.

As noted above, Atuahene’s correlative frameworks of dignity takings and dignity restoration require remedies to respond to the distinct aspects of dignity takings. We would argue that the ECCC offers a partial dignity restoration: condemning the Cham’s dehumanization via its finding of genocide; countering infantilization through recognition of the Cham’s humanity and agency via civil party participation; and recognizing reparative measures that sought to address the underlying discrimination that allowed the dignity takings to occur. However, neither the unintentional forms of restoration detailed above, nor the institutional measures provided through the ECCC, can be considered as having addressed the community destruction experienced by the Cham community. The lack of redress for this ongoing harm was reflected in our interviewees’ requests for future reparative measures. Requests for assistance in building mosques, religious schools or meeting halls were linked to identity preservation, expressed through wishes that ‘the young generation learn and discuss the history . . . and preserve religion.’¹²⁴ Some noted the need to address the loss of written records:

we were not allowed to publish, all the documents were burned . . . now, our young people don’t have any witnesses . . . I think it’s good if we can keep some culture to show.¹²⁵

122 Brianne McGonigle Leyh, *Procedural Justice?* (Cambridge: Intersentia, 2011); Luke Moffett, *Justice for Victims before the International Criminal Court* (Routledge: London, 2014); Rachel Killean, ‘Procedural Justice in International Criminal Courts,’ *International Criminal Law Review* 16(1) (2016): 1–38, 16.

123 Case 002/02, supra n 26, 4423, 4425, 4457. For critiques of the ECCC reparation mandate, see Christoph Sperfeldt, ‘Reparations at the Extraordinary Chambers in the Courts of Cambodia,’ in *Reparations for Victims of Genocide, War Crimes and Crimes Against Humanity*, ed. Carla Ferstman and Mariana Goetz (Leiden: Brill, 2020); Rachel Killean and Luke Moffett, ‘What’s in a Name?’ *Melbourne Journal of International Law* 21(1) (2020): 115–143.

124 Focus Group, Civil Parties, Svay Khleang, 21 March 2017.

125 Interview, Cham Civil Society Staff Member, Phnom Penh, 16 March 2017.

Others discussed the loss of intangible cultural anchors. For example, one young Islamic leader requested more research into the Cham's history in Cambodia, explaining:

this is important for identity preservation. Compare [the Cham] to hill tribes; they are identified as a group, they have elements like language and culture, and examples for their people to follow. For my generation, there is nothing left; we don't have anything to follow. The main challenge is how to get sources, how to assemble this information together.¹²⁶

Another interviewee noted that:

everything is changed because during the Khmer Rouge regime everything [was] destroyed. We try to research, but we have limited resources. We need support from other organizations to provide training to teachers.¹²⁷

A desire to connect with identity was also reflected in interviews with the younger generation, as expressed by one Cham student: 'I propose creating a research centre or library for the Cham community to house all kinds of documents.'¹²⁸ These framings of harm and requests draw attention to the intergenerational impacts of dignity takings. The specific requests echo Atuahene's suggestion that community destruction be remedied through the provision of resources and opportunities for uprooted communities to meaningfully reconnect through the restorative process. The emphasis on rebuilding the Cham identity resonates with Lu's exploration of 'structural dignity,' a response to historical injustice that she argues should create 'space for creativity, syncretism, and pluralism,' enabling agency 'in the making of meaning in the social world.'¹²⁹ The continued absence of resources and opportunities through which to 'make meaning' renders dignity restoration incomplete in the case of the Cham. This finding emphasizes the need for a 'thicker' understanding of harm, and the importance of allowing communities a significant role in deciding how they are made whole.

CONCLUSION

Throughout this article, we have explored what becomes visible through the application of Atuahene's dignity takings framework to the destruction of the Cham's cultural property. We have argued that its application assists us in developing a 'thicker' understanding of the Cham's experience, looking beyond the material value of property to consider its emotional, expressive and social values. Framing the Cham's experience as a dignity taking also illuminates the connections between the loss of property through displacement and destruction, and the infantilization and dehumanization experienced by the community. An exploration of these connections in

126 Interview, Islamic Leader, Chroy Changva, 16 March 2017.

127 Focus Group, Cham Community, Kampong Tralach, 19 March 2017.

128 Focus Group, Cham Students, Phnom Penh, 14 March 2017.

129 Catherine Lu, *Justice and Reconciliation in World Politics* (Cambridge: CUP, 2017), 200.

turn draws our attention to what Atuahene has termed 'community destruction,' and the role that property loss can play in severing the social and emotional ties that define and sustain a collective identity.

While a dignity takings framework serves as a means of illuminating forms of harm beyond the material, a dignity restoration framework invites us to consider the role that a broader array of measures, implemented by a broader range of actors, can play in redressing harm. As such, dignity restoration can serve as a useful framework for furthering approaches that look beyond singular, institutional responses to violence, and instead move towards a 'spectrum of interventions'¹³⁰ designed to facilitate rehabilitation of victimized groups. In the case of the Cham, considering a broader framework of dignity restoration drew our attention to the restorative role of property regimes and religious freedoms. By facilitating the rebuilding of cultural property, as well as the resumption of cultural practices and collective living, legal reform became a tool through which the Cham were able to reassert their identity as a group. Such a finding demonstrates the capacity for processes which enable formerly oppressed communities to 'use the law, the legal system, and legal services to protect and advance their rights and interests as citizens' to become a valuable part of the transitional justice 'spectrum of interventions.'¹³¹

In 2016 Atuahene expressed the hope that scholars would continue to pursue the 'cohesive and fruitful' interdisciplinary research agenda delivered by the concepts of dignity takings and restorations, offering an indicative list of possible contexts which included cultural property.¹³² Having taken up her invitation, we submit that the Cham case study highlights four nuances that arise when considering dignity restoration in the context of genocidal attacks on cultural property. First, the expressed relationships between cultural property, identity and harm; second, the connections drawn between the loss of culturally significant objects and intangible forms of heritage; third, the need to account for the intergenerational harms of heritage loss; and fourth, the acute and aggravated community destruction that results from heritage loss in the context of genocide.

Such nuances re-affirm the need for a strong bottom-up component to any measure of reparative justice,¹³³ and the need for a more expansive and culturally attuned notion of reparations. Exploring the experience of the Cham through a dignity takings and dignity restoration lens highlighted enduring harms unaddressed by mechanisms of reparation. We therefore argue that understanding the multiple values placed on property in general, and on locally significant 'instruments, objects, artefacts and cultural spaces,' has theoretical and practical value in the context of transitional justice, as a means of understanding and responding to the harms experienced by victim communities. This approach enables a more complete

130 Laurel E. Fletcher and Harvey M. Weinstein, 'Violence and Social Repair,' *Human Rights Quarterly* 24 (2002): 573–639, 581.

131 The Commission on Legal Empowerment of the Poor, *Making the Law Work for Everyone*, Vol. 1 (New York: UNDP, 2008), 3.

132 Atuahene, *supra* n 20 at 820–821.

133 Kieran McEvoy and Lorna McGregor, ed. *Transitional Justice from Below* (Oxford: Hart Publishing, 2008); Patricia Lundy and Mark McGovern, 'Whose Justice? Rethinking Transitional Justice from the Bottom Up,' *Journal of Law and Society* 35(2) (2008): 265–292.

understanding of the need for specific measures of redress, stressing the importance of moving beyond a focus on restitution and/or reconstruction to develop measures which reaffirm victims' humanity, reinforce their agency and allow them to reconnect with their community and heritage.